

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

AVIELLE HERNANDEZ, by her Guardian,	:	
SHAYANNA JENKINS HERNANDEZ	:	
	:	
vs.	:	C.A. NO.:
	:	
NATIONAL FOOTBALL LEAGUE and	:	
THE NEW ENGLAND PATRIOTS, LLC	:	
	:	

COMPLAINT AND JURY DEMAND

Introduction

1. Avielle Hernandez, by and through her parent and Guardian, Shayanna Jenkins Hernandez ("Plaintiff"), brings this action to seek redress for the loss of parental consortium she has experienced based on the negligent conduct of Defendants that deprived her of the companionship and society of her father, Aaron Hernandez.
2. At the time of his death, Aaron Hernandez ("Aaron") had the most severe case of Chronic Traumatic Encephalopathy ("CTE") medically seen in a person of his young age of 28 years by the world renowned CTE Center at Boston University. Aaron had Stage III CTE usually seen in players with a median age of death of 67 years. Aaron played football in the National Football League ("NFL") for the New England Patriots for three (3) seasons starting in 2010. By the time Aaron entered the NFL, in 2010, Defendants were fully aware of the damage that could be inflicted from repetitive impact injuries and failed to disclose, treat, or protect him from the dangers of such damage. This complaint seeks damages for his young daughter Avielle from Defendants the NFL and the New England Patriots.

Parties

3. Avielle Hernandez is a minor and the daughter of the deceased, Aaron Hernandez. Avielle resides with her mother, Shayanna Jenkins Hernandez, at 45 Eagle Peak Road, Pascoag, Rhode Island.
4. Plaintiff Shayanna Jenkins Hernandez ("Plaintiff") brings this action on behalf of Avielle Hernandez as her parent and Guardian. Shayanna resides at 45 Eagle Peak Road, Pascoag, Rhode Island.
5. Prior to Aaron's death on April 19, 2017, and during his professional football career, Aaron, Shayanna, and Avielle maintained a residence at 22 Ronald C. Meyer Drive, North Attleboro, Bristol County, Massachusetts.
6. Defendant National Football League ("NFL") is an unincorporated association consisting of separately owned and independently-operated professional football teams which operate out of many different cities and states within this country. The NFL acts as a trade association for the benefit of its thirty-two independently operated teams and maintains its offices at 345 Park Avenue, New York, New York.
7. Defendant New England Patriots, LLC ("New England Patriots") is a limited liability company duly organized and existing under the laws of the state of Delaware with a principal place of business located at One Patriot Place, Foxborough, Massachusetts. The New England Patriots are an independently operated professional team within the NFL.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction over this case through diversity jurisdiction, pursuant to 28 U.S.C. § 1332, because the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

9. Venue in this district is proper, pursuant to 28 U.S.C. § 1391, because the Defendants or their agents reside and transact business in this district and a substantial part of the events giving rise to Plaintiff's claim occurred in this district.

Facts

10. The National Football League ("NFL") is the most successful professional sports organization in the United States. In 2016 alone the NFL generated approximately thirteen billion dollars in revenue. A substantial portion of this revenue comes from sponsorships, licensing, and the sale of national broadcasting rights to football games. Professional football teams that compete in the league, such as the New England Patriots, share a percentage of the League's overall revenue.

11. Since its formation on August 20, 1920, as the American Professional Football Association ("APFA"), renamed the NFL in 1922, the NFL has promoted the game of football, acted as a governing body, and established rules related to player health and safety, league policies, and team ownership.

12. The NFL actively monitors player conduct, health, and safety. Additionally, the NFL consults with medical professionals regarding the risks to players' health associated with playing football. The NFL has autonomous power to establish rules and policies and, at all relevant times, exercised its power to set rules and policies for the health and safety of football players and to control how the game of football is played.

The NFL Was Well Aware of The Long-Term Risks of Head Impacts

13. For decades, the medical and scientific community has been aware of the link between repetitive jarring and injury to the head, and increased risk of neuro-cognitive damage.

14. Since the early 1990s the medical and scientific community has indicated, through overwhelming consensus, that many football players developed brain injuries from sub-concussive injuries and concussions. Independent scientists and neurologists recognized that concussions were serious injuries and result in permanent brain injury, impaired cognitive abilities, and increased onset of mental deterioration.

15. The NFL has been aware since at least 1994 that on-field collisions lead to latent head injuries that have long-term debilitating effects on players. For decades, the NFL has been aware that multiple blows to the head can lead to long-term brain injury including, but not limited to, memory loss, dementia, depression, and CTE.

16. The NFL has also acknowledged the debilitating effects of head trauma in its court filings. In 1999, Mike Webster, who had played professional football for the Pittsburgh Steelers between 1974 and 1990, filed a request for complete disability benefits with the NFL based on neurological damage he sustained over the course of his career. An NFL physician examined Webster independently and concluded that Webster was, in fact, mentally disabled as a result of head impacts he sustained while playing in the NFL. In December 2006, the Fourth Circuit of the United States Court of Appeals stated in an unpublished opinion that the NFL's Disability Plan accepted that Webster's mental disability was caused by the multiple head injuries Webster sustained while playing professional football.

17. Although the NFL was aware of the link between sub-concussive and concussive injuries sustained in football and chronic neuro-cognitive injury to players, the NFL hid or otherwise failed to provide this information to NFL players. This failure has been well documented in the news media, in the scientific and medical community, during Congressional hearings, and in prior litigation.

The NFL's Mild Traumatic Brain Injury Committee

18. The NFL's Mild Traumatic Brain Injury Committee ("MTBI Committee") was formed in 1994 to "improve player safety" and recommend "rule changes aimed at reducing head injuries."

19. Ostensibly, the MTBI committee set out to study the effects of concussive injuries on NFL players. However, the NFL used the MTBI Committee to coerce and manipulate the scientific and medical community in an effort to avoid potential liability and rule changes that might affect the commercial success of professional football. For years the MTBI utilized biased, industry friendly, and false information relating to concussive injuries in press releases, publications and scientific literature.

20. Despite the NFL publicizing that the MTBI Committee's doctors and researchers were independent of the NFL, the MTBI Committee consisted of at least five (5) persons previously connected to the NFL.

21. Moreover, the NFL failed to appoint any neurologist, head trauma specialist, or neuropathologist to chair the MTBI Committee. Instead NFL Commissioner Paul Tagliabue appointed Dr. Elliot Pellman ("Dr. Pellman"), a rheumatologist, who had no specialized training or education in concussions or head injuries. Dr. Pellman was a paid physician and trainer for the New York Jets.

22. Despite his lack of qualifications, Dr. Pellman remained the chair of the MTBI Committee from 1994 until 2007.

23. During this period, the MTBI Committee publicly disputed scientific findings that established a link between the sub-concussive and concussive injuries players suffered during football games and permanent neurological injuries.

24. Dr. Ira Casson, a board-certified neurologist, and Dr. David Viano, a biomedical engineer, were both members of the MTBI Committee and they attempted to discredit published scientific studies that linked the head impacts and concussions suffered by NFL players to permanent neuro-cognitive injuries.

25. The MTBI Committee also conducted and published industry-sponsored, biased, falsified and inaccurate research to support the NFL's position that there was no connection between sub-concussive and concussive injuries and permanent neurological injuries.

26. In 1997, the Academy of Neurology published guidelines for athletes returning to play the game after having suffered a concussion. These guidelines recommended that any athlete who suffers a concussion at Grade 3, where consciousness is lost, should be ineligible to play and should rest until asymptomatic for one week. After a prolonged Grade 3 concussion, the Academy of Neurology recommended that the athlete should be withheld from play for two (2) weeks, at rest, and without exertion.

27. In 2000, the NFL officially rejected the application of these guidelines to NFL players.

28. Between 2002 and 2007, Dr. Bennet Omalu, an independent researcher at the University of Pittsburgh, examined the brain tissue of deceased NFL players, including Mike

Webster, Terry Long, Andre Waters and Justin Strzelczyk. These individuals suffered multiple concussions during their NFL careers and, later in life, exhibited symptoms of deteriorated cognitive functions, paranoia, panic attacks and depression. Dr. Omalu determined that these individuals suffered from the neurodegenerative disorder Chronic Traumatic Encephalopathy (CTE). Dr. Omalu's findings were published in *Neurosurgery*, where he concluded that Webster's and Long's respective deaths were partially caused by CTE and were related to multiple concussions suffered during their activity in the NFL.

29. In response to Dr. Omalu's articles, Dr. Pellman, Dr. Casson, and Dr. Viano, members of the MTBI Committee, wrote a letter to the editor of *Neurosurgery* demanding that Dr. Omalu's article be retracted. Dr. Omalu's articles were not retracted, and *Neurosurgery* would later publish additional papers by Dr. Omalu on this topic.

30. In October 2003, the MTBI Committee published its first paper, and it suggested that there were no long term negative health consequences associated with concussions or sub-concussive injuries sustained by NFL players.

31. In November 2003, Dr. Pellman appeared on the HBO television program, "Inside the NFL", to discuss a report, by the Center for the Study of Retired Athletes, that linked concussions and depression in former players and stated flatly "when I look at that study, I don't believe it."

32. The MTBI Committee subsequently published sixteen (16) papers between 2003 and 2009. The MTBI Committee indicated that all of the completed studies supported their conclusion that there were no long term negative health consequences associated with concussions or sub-concussive injuries sustained by NFL players.

33. In 2004, the MTBI Committee published a study, based on clinical data they collected from physicians and athletic trainers for 6 years and concluded that there is no evidence of increased severity of injury in multiple versus single mild traumatic brain injury cases. Their research also concluded that repeat injuries occurred relatively infrequently during the 6-year period.

34. February 2005, the MTBI Committee published findings, based on a 6-year study, that “[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season.” The report continued stating: “the current decision making of NFL team physicians seems appropriate for return to the game after a concussion.”

35. Biased and erroneous conclusions that the MTBI Committee published include, but are not limited to, the following: Drs. Pellman and Viano stated that because a “significant percentage of players returned to play in the same game [as they suffered a concussion] and the overwhelming majority of players with concussions were kept out of football-related activities for less than 1 week, it can be concluded that mild [TBIs] in professional football are not serious injuries”; that NFL players did not show a decline in brain function after a concussion; that there were no ill effects among those who had three (3) or more concussions or who took hits to the head that sidelined them for a week or more; that “no NFL player experienced the second-impact syndrome or cumulative encephalopathy from repeat concussions.”

36. In 2006, the MTBI committee published research concluding that “on-field evaluation by team physicians is effective with regard to the identification of cognitive and

memory impairments immediately after an injury." The paper again rejected the American Academy of Neurology's guidelines for concussion safety.

37. Throughout this period, the MTBI Committee was heavily criticized by independent doctors and researchers because the MTBI Committee's conclusions were contrary to a multitude of peer reviewed studies and were based on one-sided data-collection techniques.

38. In February, 2007, Dr. Pellman stepped down as chairman of the MTBI Committee following increasing media scrutiny over the MTBI Committee's studies. He was replaced as chair by Dr. Ira Casson and Dr. David Viano, but remained a member of the Committee.

39. Dr. Casson and Dr. Viano continued to dismiss outside studies and overwhelming evidence that linked the head impacts and concussions suffered by NFL players to permanent neuro-cognitive injuries. In a 2007 televised interview by Bernard Goldberg, on HBO's "Real Sports," Dr. Casson unequivocally stated that there was no evidence that links multiple head injuries among pro football players with depression, dementia, early onset Alzheimer's, or other permanent neurological disorders.

40. On June 19, 2007, the NFL held its first league-wide Concussion Summit in Chicago, where all 32 NFL team's health and safety committees, doctors and trainers convened. At the summit, Dr. Casson told team doctors and trainers that the only scientifically valid evidence of CTE has been found in boxers and jockeys. He added: "it has never been scientifically, validly documented in any other athletes."

41. On August 14, 2007, the NFL published an informational pamphlet on concussions to NFL players and their families. It stated: "Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems if

each injury is managed properly. It is important to understand that there is no magic number for how many concussions is too many. Research is currently underway to determine if there are any long-term effects of concussion in NFL athletes."

42. In 2008, Boston University's Dr. Ann McKee found CTE in the brains of two more deceased NFL players, John Grimsley and Tom McHale. Dr. McKee stated, "the easiest way to decrease the incidence of CTE is to decrease the number of concussions or mild traumatic brain injuries." Dr. McKee further noted that "this is accomplished by penalizing intentional hits to the head . . . and adhering to strict 'return to play' guidelines." Finally, Dr. McKee concluded that "studies indicate that safe return to play guidelines might require at least 4 to 6 weeks to facilitate more complete recovery and to protect from reinjury, as a second concussion occurs much more frequently in the immediate period after a concussion."

43. Dr. Casson characterized each study as an isolated incident, in response to Dr. McKee's studies. Responding to the publication of Dr. McKee's studies, Dr. Casson asserted in a written statement, before his appearance at a House Judiciary Committee hearing, in January 2010, "[m]y position is that there is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts in professional football result in long-term brain damage."

44. In 2008, the NFL commissioned the University of Michigan's Institute for Social Research to conduct phone interviews, of a random sample of 1,063 retired players and ask questions across a range of topics. The findings of the study, released on September 10, 2009, reported that "[d]iseases of the mind are rare in both [the general population and

NFL retirees], but the NFL retirees do report higher rates. At 6 percent, the older group of retirees is particularly high."

45. After the finding was published, NFL spokesperson Greg Aiello stated in an email message, that the study did not formally diagnose dementia, that it was subject to shortcomings of telephone surveys and "that there are thousands of retired players who do not have memory problems." Dr. Casson then stated: "What I take from this report is there's a need for further studies to see whether or not this finding is going to pan out, if it's really there or not. I can see that the respondents believe they have been diagnosed. But the next step is to determine whether that is so.

46. Based on these and many other documented incidents, it is clear that the NFL was aware of the neurological risks associated with repeated head impact, and that the NFL failed to disclose these risks to players. This conduct also needlessly delayed adoption of rules and league policies related to player health and safety with regard to concussions and subconcussive head trauma.

The Risk of Chronic Traumatic Encephalopathy From Repeated Traumatic Head Impacts

47. Clinical and neuro-pathological studies by independent researchers in the medical and scientific community demonstrate a consensus that multiple head injuries, concussions, or repeated traumatic head impacts (including sub-concussive and concussive blows) sustained during an NFL player's career can cause severe neuro-cognitive problems such as depression, early-onset of dementia, and the neurological degenerative disorder Chronic Traumatic Encephalopathy (CTE).

48. CTE involves the slow build-up of the Tau protein within the brain tissue that causes diminished brain function, progressive cognitive decline, memory loss, executive

dysfunction, aggression, explosive behavior, loss of concentration, mood swings, depression, apathy, and cognitive impairment. CTE is also associated with an increased risk of suicide.

49. Studies on many former football players, including former NFL players, have established that football players who sustain repetitive head impacts while playing the game have suffered and continue to suffer neurological damage and cognitive impairment.

50. In addition, and as a result of these repeated traumas, published peer reviewed scientific studies have shown that concussive and sub-concussive head impacts while playing professional football are linked to a significant risk of developing CTE.

51. While other sports responded to this research by making their leagues and games safer, the NFL consistently and publicly denied that football-related impacts had any connection to long-term brain injury. As recently as 2009, the league's medical committee continued to assert that there were no long-term negative health risks associated with concussions or other football-related head impacts.

52. The NFL deliberately concealed the fact that playing in the NFL could lead to permanent irreversible brain damage in players. The league repeatedly asserted that professional football players were at no greater risk of brain or neurological injury than the public at large.

Congressional Hearing Into NFL's Concussions Response

53. At a Congressional hearing, on October 28, 2009, NFL Commissioner Roger Goodell testified that "the playing rules changes the NFL makes in the interest of safety will be copied at the lower levels of play . . . [i]n addition to our million youngesters aged 6-14 play tackle football each year; more than one million high school players also do so and nearly

seventy five thousand collegiate players as well. We must act in their best interests even if these young men never play professional football"

54. On January 4, 2010, the House Judiciary Committee held an additional hearing on legal issues relating to football head injuries. The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, of the Committee on the Judiciary testified, from a prepared statement, that "[y]oung players and coaches take their lead from the NFL. Many children seek to imitate the supposed 'bravery' of players they see on television . . . until recently, the NFL had minimized and disputed evidence linking head injuries to mental impairment in the future . . . [w]hen I asked NFL Commissioner Goodell at our hearing in October whether there was a linkage between football and cognitive decline among NFL players, he refused to acknowledge a connection."

55. During these Congressional hearings, Dr. Casson gave testimony stating: "My position is that there is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts in professional football result in long term brain damage."

56. Dr. Casson also addressed tau deposition in his testimony and written statement before Congress. He asserted that "tau pathology is not exclusive to head trauma. Tau deposition is the predominant pathology in a number of other neurologic diseases that have never been linked to athletics or head trauma. Some of these diseases have genetic causes, some have environmental toxic causes, and others are still of unknown cause."

The NFL's Head, Neck, and Spine Committee

57. On March 16, 2010, the NFL announced the creation of the Head, Neck, and Spine Medical Committee (the "NFL HNS Committee") to encourage and support research and education about head neck and spine injuries. Additionally, the NFL announced that Dr. Pellman would no longer be a member of the panel. Dr. H. Hunt Batjer and Dr. Richard G. Ellenbogen were selected to replace Casson and Viano. The two new co-chairmen selected Dr. Mitchel S. Berger to serve on the new NFL HNS Committee.

58. The new NFL HNS Committee admitted that the data collected by the NFL's former brain-injury leadership was "infected," and that their committee should be assembled anew. The Medical Committee member, Dr. Batjer continued by adding: "We all had issues with some of the methodologies described, the inherent conflict of interest that was there in many areas, that was not acceptable by any modern standards or not acceptable to us. I wouldn't put up with that, our universities wouldn't put up with that, and we don't want our professional reputations damaged by conflicts that were put upon us."

59. In January 2013, the NFL announced new player rules designed to protect player health and safety which included a concussion assessment protocol, recommended and developed by the NFL NHS Committee. In August 2013, the NFL released a video explaining new NFL playing rules and included a ban on "crown of the helmet" hits outside the tacklebox, to further reduce high impact hits to the head.

60. Research into concussive and sub-concussive trauma in current and former NFL players continues. In July, 2017, Boston University's School of Medicine published its most detailed report to date on the link between repeated head trauma in football and long term neurological impairment. The study examined the brains of 202 deceased football players

and found evidence of CTE in 201 of the brains, including all 101 brains examined from former NFL players.

Aaron Hernandez developed CTE as a Result of Playing Professional Football

61. Between 2010 and 2013 Aaron Hernandez played football for the New England Patriots.

62. During his professional football career Aaron experienced repeated traumatic head impacts, including sub-concussive blows and concussions, with greater frequency and severity than the general population of men of a similar age.

63. The repeated head impact injuries experienced by Aaron, including the sub-concussive blows and concussions, are known to greatly increase the risk of developing the neurodegenerative disorder Chronic Traumatic Encephalopathy (CTE).

64. On April 19, 2017, Aaron committed suicide while in the custody of the Massachusetts Department of Correction. Boston University's School of Medicine posthumously examined Aaron Hernandez's brain and neurological matter. On August 17, 2017, the School of Medicine issued a Neuropathology Report diagnosing Aaron with Stage III CTE at the time of his death.

65. CTE is a neurological disorder that progresses through four (4) worsening stages of brain degeneracy. According to the CTE Society, individuals suffering from CTE in Stage III, like Aaron, typically experience symptoms such as memory loss, executive dysfunction, aggression, explosive behavior, loss of concentration, mood swings, depression, apathy, and cognitive impairment.

66. The Boston University Neuropathy Report also notes that Aaron's CTE pathology was unusually severe considering his young age.

COUNT I: LOSS OF PARENTAL CONSORTIUM

67. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
68. The Commonwealth of Massachusetts recognizes loss of consortium to include the injury experienced when a child is deprived of the society and companionship of a parent as a result of tortious conduct.
69. Plaintiff is the proper party to bring such a claim because Avielle is the daughter of Aaron Hernandez and Aveille was born on November 6, 2012, while Aaron was employed by Defendant New England Patriots.
70. Aaron played professional football for Defendant New England Patriots in the Defendant National Football League between 2010 and 2013.
71. Defendants expressly, and through their conduct, assumed the duty to establish rules related to health and safety of players such as Aaron.
72. Throughout the relevant period, Defendants were fully aware of the dangers of exposing NFL players, such as Aaron, to repeated traumatic head impacts. Yet, Defendants concealed and misrepresented the risks of repeated traumatic head impacts to NFL players.
73. In particular, Defendants openly disputed that any short-term or long-term harmful effects arose from football-related sub-concussive and concussive injuries.
74. Defendants also disseminated industry friendly, biased, and otherwise false information designed to manipulate scientific and medical research and public opinion through the MTBI Committee.
75. Defendants conduct needlessly delayed adoption of rules and league policies related to player health and safety with regard to concussions and subconcussive head trauma.

76. Prior to the 2010 NFL draft, and before the beginning of each football season, Aaron was examined by medical professionals associated with Defendants. Medical examinations of Mr. Hernandez during this period would have revealed cognitive impairment as Mr. Hernandez's CTE worsened.

77. Defendants knew, or should have known, it was not safe for Aaron to continue playing football and that extending Aaron's football career placed him at greater risk for neurological degeneration. Despite the scientific information available neither the risks nor the findings of any medical examinations were ever communicated to Aaron.

78. Such tortious conduct constitutes a breach of the duty of reasonable and ordinary care owed to Aaron.

79. As a result of this breach, Aaron was exposed to repeated traumatic head impacts between 2010 and 2013, greatly increasing the risk he would develop a degenerative neurological disorder, such as CTE.

80. Aaron did in fact develop the degenerative neurological disorder CTE. At the time of his death, Aaron was found to be in an advanced stage of CTE.

81. Depression, uncontrollable aggression, and suicidal impulses are recognized to be symptoms of late stage CTE.

82. On April 19, 2017, Aaron succumbed to the symptoms of CTE and committed suicide.

83. As a result of Defendants' conduct and the injury experienced by Aaron, Avielle Hernandez was deprived of the love, affection, society, and companionship of her father while he was alive.

WHEREFORE, Plaintiff requests the following relief:

1. Judgment against Defendants;
2. Compensatory damages;
3. Punitive damages;
6. Attorney's fees and costs;
7. Interest; and
8. Such other relief as may be just and appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE.

Respectfully Submitted,
AVIELLE HERNANDEZ, by her Guardian,
SHAYANNA JENKINS HERNANDEZ
By their Attorney,

Date: 9-21-17

/s/ George J. Leontire
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